

University of Dundee

## Disabled people, medical inadmissibility, and the differential politics of immigration

Wilton, Robert; Hansen, Stine; Hall, Edward

*Published in:*  
Canadian Geographer

*DOI:*  
[10.1111/cag.12361](https://doi.org/10.1111/cag.12361)

*Publication date:*  
2017

*Document Version*  
Peer reviewed version

[Link to publication in Discovery Research Portal](#)

### *Citation for published version (APA):*

Wilton, R., Hansen, S., & Hall, E. (2017). Disabled people, medical inadmissibility, and the differential politics of immigration. *Canadian Geographer*, 61(3), 389-400. <https://doi.org/10.1111/cag.12361>

### **General rights**

Copyright and moral rights for the publications made accessible in Discovery Research Portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from Discovery Research Portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain.
- You may freely distribute the URL identifying the publication in the public portal.

### **Take down policy**

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

# **Disabled People, Medical Inadmissibility and the Differential Politics of Immigration**

**Robert Wilton**

**School of Geography & Earth Sciences**

**McMaster University**

**[wiltonr@mcmaster.ca](mailto:wiltonr@mcmaster.ca)**

**Stine Hansen**

**School of Geography & Earth Sciences**

**McMaster University**

**[hanses2@mcmaster.ca](mailto:hanses2@mcmaster.ca)**

**Edward Hall**

**School of the Environment**

**University of Dundee**

**Dundee**

**[e.c.hall@dundee.ac.uk](mailto:e.c.hall@dundee.ac.uk)**

This is the peer reviewed version of the following article: 'Disabled people, medical inadmissibility, and the differential politics of immigration', *Canadian Geographer*, which has been published in final form at <http://dx.doi.org/10.1111/cag.12361>. This article may be used for non-commercial purposes in accordance with Wiley Terms and Conditions for Self-Archiving

## **Introduction**

Pursuant to subsection 38(1) of the Immigration and Refugee Protection Act, your family member, Jocelyn Colaco, is a person whose health condition: Mental Retardation - Mild, might reasonably be expected to cause excessive demand on health or social services... As a result, your family member is inadmissible to Canada on health grounds. (Colaco vs. Canada, Minister of Citizenship and Immigration 2006)

The statement above was published in a Federal Court of Canada decision. It is an excerpt from a decision letter sent by Citizenship and Immigration Canada (CIC) to Savita and Peter Colaco, who applied to immigrate to Canada in the 'skilled worker' category in 2003 but were denied entry because a CIC medical officer judged that one of their two children, who has an intellectual disability would place an 'excessive' burden on the Canadian social service system. This decision reflects statutory provisions contained within immigration law that mandate CIC staff to assess applicants to determine whether they have health conditions (including disabilities) 'that might reasonably be expected to cause excessive demand on health or social services' (Immigration of Refugee Protection Act, 2001).

In this paper we examine the extent to which Canada's immigration laws shape and constrain the mobility of immigrants with disabilities. We draw on key informant interviews, policy analysis and immigration data to critically assess the 'excessive demand' provisions of the immigration law, and the extent to which these constitute barriers to disabled persons attempting to immigrate to Canada. Our aims in the paper are twofold. First, we draw attention to the ways in which the immigration system, as a 'space of exception' (Ong 2006) beyond the protections afforded Canadian citizens, positions some disabled bodies as problematic. This positioning embodies longstanding biopolitical concerns with the well-being of the nation, but it also reflects

a more contemporary intensification of market logics in immigration policy (Ong 2006; Martin 2011; Saltes 2013). Second, through our analysis, we wish to contribute to an ongoing cross-fertilization between geographic research on disability and the burgeoning mobilities literature. Given that the barriers that confront disabled people in their efforts to move have been central to disability scholarship in recent decades, there is good reason to consider how the wave of interest in im/mobilities resonates with disability scholarship. At the same time, disability research can usefully inform understandings of the diversity, and contextually embedded nature, of human (im)mobility. There is already valuable scholarship on the ‘mundane’ or everyday im/mobilities of disabled people, especially in Western urban settings. However, there has been relatively little attention given to disabled people’s experiences of more exceptional forms of im/mobility, including immigration.

In what follows, we examine recent geographic scholarship on disability, with attention to questions of movement and mobility. We then engage recent mobilities scholarship, focusing particularly on the ‘differential politics of mobility’ (Cresswell 2010a) that confront different groups at multiple spatial scales. Next, we outline the methods used in our research. Our analysis comprises two sections. The first looks at the evolving nature of the medical inadmissibility provisions within Canadian immigration law. The second uses a legal challenge to these provisions as a window onto the logics and practices that position some disabled bodies as excessively burdensome. We conclude by reflecting on legal efforts to challenge this ‘space of exception’ while acknowledging that recent developments in immigration policy signal a heightening of social security concerns.

## **Disability, accessibility, movement**

The past two decades have seen a burgeoning scholarship on the diverse social geographies of disabled people (Gleeson 1998; Butler and Parr 1999; Imrie and Edwards 2008; Chouinard et al 2010; Blewett and Hanlon 2016; Hall and Wilton 2016). A central concern of this scholarship has been to understand the ways in which the organization of society –in terms of the built environment, cultural norms, structure of the economy, and state institutions – work to facilitate or constrain the participation of disabled people in different spheres of social life. Initially, the ‘social model of disability’ informed much of this work (Gleeson 1998; Shakespeare 2014). Developed within disability studies, this conceptual framework drew a distinction between people’s physical, mental, intellectual and sensory impairments and the *disabling* impacts of a society that failed to accommodate or make space for a diverse population with varying physical, mental and sensory needs and capacities (Gleeson 1998; Chouinard et al 2010). More recent work has recognized the limitations of the social model, embracing strands of relational thinking to approach disablement as a process that is shaped by ongoing and contingent social and spatial relationships (e.g., Thomas 2004, Macpherson 2010, Worth 2013; Hall and Wilton 2016). From this perspective, understandings and experiences of disability can be understood as ‘emergent properties’ located in ‘the interplay between the biological reality of physiological impairment, structural conditioning, and socio-cultural interaction/elaboration’ (Williams 1999 in Shakespeare 2014, p.73). We adopt such a perspective here to examine how disability emerges through the interplay of statutory provisions of immigration law and practical enactments of the immigration system by applicants, visa officers, medical examiners, and others.

Questions of movement and accessibility have been central to geographic scholarship on disability. To a significant extent, this research focus reflects and responds to the importance of

mobility and accessibility as key political issues within broader disability rights movements. In the United States, the direct action tactics of ADAPT were centrally focused on the need for accessible public transportation (Fleischer and Zames 2001). In the United Kingdom, DAN (the Direct Action Network) placed similar emphasis on the need to ensure access to transit systems, employing the motto ‘to go where all others have been before’ (Kitchin 1998).

Geographic scholarship has drawn attention to both the changes that have come about as a result of disabled people’s activism as well as the continuing challenges that disabled people face with respect to accessibility and mobility (e.g., van Hoven and Elzinga 2009; Taylor and Jozefowicz 2012; Imrie 2012; Gaete-Reyes 2015). On the one hand, this scholarship has focused attention on the enduring practical difficulties of movement. Comparing intra-urban mobility of disabled and non-disabled people, Taylor and Jozefowicz (2012) find that disabled people make fewer and shorter trips. The authors attribute these differences to several factors including material constraints and the inaccessibility of urban environments and transit systems. These findings resonate with other recent work on the problems and exclusions that disabled people continue to face in their efforts to be mobile in urban settings (van Hoven and Elzinga 2009; Imrie 2012; Gaete-Reyes 2015). On the other hand, studies have directed attention to the misrepresentations of disability that underlie and inform policy and decision-making about movement and accessibility. Imrie (2012, p.2266) examines ‘Shared Space’ urban design initiatives, arguing that in government documents and consultations ‘knowledge of/about diverse bodies in interaction with shared space is conspicuous by its absence’. Where disabled people are present, their experiences are often rendered in problematic and essentialist terms. Such ‘undifferentiated thinking’ produces spaces that are attuned to the mobility needs and capacities of a supposedly universal (but implicitly non-disabled) human subject (van Hoven and Elzinga 2009, p.241). For Imrie, these misrepresentations

contribute to the ongoing marginalization of disabled people, and reflect enduring assumptions about the status of disability as ‘anathema to the... core values of mobility’ (p.2261).

Existing geographic scholarship has made important contributions to an understanding of disabled people’s experience of in/accessibility and im/mobility. However, much of this work has been concerned with what Binnie et al. (2007) characterize as ‘mundane’ or everyday mobilities, particularly in contemporary urban built environments and transportation networks. By contrast, much less attention has been given to the experiences of disabled people with respect to more exceptional forms of movement such as those involved in international migration. As one exception, Maddern and Stewart (2010) have assessed the impact of biometric technologies at border crossings for bodies that fail to approximate non-disabled norms, while Ingram (2010) has looked at the ways in which national security concerns have shaped immigration policy towards people with HIV/AIDS. There has also been some important work in the tourism literature examining the practical challenges confronting disabled people as international travellers (e.g., Poria et al 2010; Darcy 2012). While this work is concerned with short-term travel for business or leisure, our aim here is to shed further light on the nature of disabled people’s experiences within the immigration system as they attempt to move permanently from one country to another. There is good reason to devote attention to this issue. As we noted above, recent decades have seen important advances with respect to disability rights legislation in countries such as Canada, the UK and the US. However, immigration systems often stand as ‘spaces of exception’ (cf. Ong 2006) in the sense that hard-earned rights and protections afforded disabled citizens of a country often do not apply to immigration applicants. In Canada, for example, immigration applicants currently fall outside the protections afforded citizens under the equality rights provision of the Canadian Charter of Rights and Freedoms (hereafter ‘the Charter’). Individuals within this space may

therefore confront oppressive practices that have profound implications for the im/mobility of specific bodies. Additionally, a focus on disabled migrants deepens an understanding of the diversity of immigration experiences. As Cresswell and Merriman (2011, p.10) suggest, popular representations of migrants frequently ‘overlook not only the complex histories and geographies of migration but also the diverse array of individuals who have assumed this subject position.’

### **(Im)mobilities**

The past decade has seen a rapid growth of what some have characterized as a ‘new mobilities paradigm’ within geography and allied fields (Cresswell 2010b, 2014; Cresswell and Merriman 2011; Merriman 2012; Söderström et al 2013). Like recent geographic work on disability, this scholarship has been influenced and undergirded in significant ways by relational approaches to space and subjectivity. For proponents, mobility and mobile approaches to geography offer a welcome alternative to sedentarist perspectives rooted in conceptions of space-time. Merriman (2012, p.24) argues that an embracing of *movement-space* involves an ontological and epistemological shift, centring affect, force, rhythm and movement in efforts to comprehend ‘how we think and feel our worlds’.

At the same time, scholarship has shown a concurrent interest in forms and experiences of stillness and immobility, recognizing that the capacity to move is differentially distributed across populations on the basis of race, class, gender, citizenship, age and other factors. Jocoy and Del Casino (2010), for example, demonstrate the complex relationship between power, place and mobility in the everyday movements of homeless people, suggesting that, for different groups of people ‘mobility and immobility are each generative of both power and powerlessness.’ The same theme is evident at a different scale in Martin’s (2011) work on undocumented migrants, when he



argues that vulnerable groups locked out of global flows confront periods of ceaseless movement and chronic stillness, with little control over either experience. Recognizing the broad array of constraints that act to fix certain people in place, Cresswell (2012) has called for greater attention to the nature of these im/mobilities at both experiential and political levels. This necessitates close attention to what he has called a differential politics of mobility.

Spinney et al (2015, 328) suggest that ‘we remain in the early stages of exploring how the bounding of legitimate citizenship through the ways in which people move intersects with other powerful delineations of social difference and competence, such as gender, ethnicity, age, sexuality and disability’. Importantly, these authors suggest that thinking critically about the relationship between im/mobility and citizenship may provide opportunities to understand citizenship ‘as it unfolds on the ground, shaped by embodied experiences of mobility alongside policy paradigms [reference omitted], and as practiced in relation to legal codifications of citizen mobility.’ As we suggest below, this line of thinking resonates with recent efforts to rethink the limits of legal protections afforded to disabled immigrants that imagine a more mobile and inclusive notion of citizenship.

Exploring the confluence of disability and immigration, we draw particularly from the work of Söderström et al. (2013). These authors examine the implications of recent mobilities scholarship for the field of migration studies, arguing that the latter remains a state-centered field of study in which:

The binary categorization of migrants into ‘wanted’ and ‘unwanted’ migrants from the perspective of the receiving state and its national economy continues to be the main axis of distinction as well as the fulcrum of public debate (p.xiv)

Söderström et al. argue that a mobilities perspective provides a way to question the conceptual and

methodological privileging of the nation-state. Such an approach does not ignore the power of the state but rather directs attention to the mechanisms, logics and sites through which the state's power of classification is enacted and reproduced. There are parallels here with recent work on 'bordering' as a way of capturing the diverse processes and places through which acceptable forms of mobility are distinguished from other more threatening or unwanted movements (Rumford 2010; Cresswell 2012).

In this paper, we examine how the state's power to define and categorize wanted and unwanted migrants is enacted specifically through the medical inadmissibility provisions of Canadian immigration law. While in recent years immigration has been increasingly understood in relation to heightened (state) securitization (Amoore 2006), the focus on medical inadmissibility sheds light on concerns about *social* security and the perceived impacts of disabled bodies on national welfare systems. At the same time, we suggest that the contemporary situation reflects an intensification of market logics within the immigration system, placing greater emphasis on the immediate economic value of migrant bodies.

## **Methodology**

Our methodology for this paper encompassed three distinct components. First, we collected and analyzed a broad range of documents, principally from Citizenship and Immigration Canada (CIC). These documents encompass the relevant acts, as well as policy directives and procedural documents that offer insight into the interpretation and application of the medical inadmissibility provisions within the immigration law. These include CIC operational directives, as well as documentation and instructions issued to Panel Physicians (PP) who conduct immigration medical examinations. These materials were accessed principally through CIC's website. We also gathered

and analyzed legal documents relating to cases heard at the Federal and Supreme Courts of Canada that have sought to challenge the medical inadmissibility provisions. The analysis of case law, while not exhaustive, was guided by insight from key informants with respect to the most significant legal decisions. Legal documents were accessed through the online records of the Federal and Supreme Courts.

Second, we interviewed six key informants who have specific knowledge of the medical inadmissibility provisions of immigration law. Four of these key informants are immigration lawyers who had been involved in legal cases concerning medical inadmissibility. The remaining two are immigration consultants with detailed knowledge of the immigration application process, including the medical inadmissibility provisions. Interviews were conducted in-person or over the telephone, and ranged in length from one to two hours. Interviews were transcribed in full for analysis.

Finally, we obtained data from Citizenship and Immigration Canada on the numbers of immigration applicants deemed medically inadmissible. Obtaining these data required us to file *Access to Information Requests*. While we requested data covering the period 2000-2014, we were informed by CIC that ‘refusal grounds’ for unsuccessful permanent residency applications were confined to case notes until 2011 and were therefore not available to query. With the introduction of a new *Global Case Management System* (GCMS) in 2011/12, refusal grounds ‘have been captured in more of a systematic method’ (personal communication from ministry staff). We also requested data on immigrants’ region of origin and specific health conditions/disabilities but were informed that these data were not available.

One of the limitations of this methodology is that we have not included the voices of disabled persons and family members with experience of the immigration process. The main

reason for this absence was the difficulty of identifying and recruiting potential respondents, particularly those persons who has been found medically inadmissible (the majority of whom do not appeal this decision). We did ask some key informants about the possibility of passing on information about the study to past clients, but they declined to assist in the recruitment process, citing privacy and confidentiality as concerns.

In what follows, we draw on these data to examine the evolving nature of the medical inadmissibility provisions. We then focus on the ways in which the system works in practice, drawing from both the key informant interviews and insights from a key legal challenge to the medical inadmissibility provisions.

### **Immigration and Medical Inadmissibility**

Since confederation, Canada's immigration laws have contained provisions to deny admission to immigrants because of ill health and/or disability. These have consistently identified two bases for exclusion. The first focuses on threats to public health and safety, both through the potential spread of an infectious disease and through the potential safety risk that specific individuals might pose (often in reference to insanity/mental ill health). The second basis for exclusion, and the focus of this paper, is the prospect that an immigrant with a disability or health condition might constitute an undue burden on the public purse. The wording from the 1906 immigration act specified that:

No immigrant shall be permitted to land in Canada, who is feeble-minded, an idiot, or an epileptic, or who is insane, or has had an attack of insanity within five years; nor shall any immigrant be so landed who is deaf and dumb, or dumb, blind or infirm, unless he belongs to a family who accompany him or are already in Canada and who give security,

satisfactory to the Minister, for his permanent support if admitted into Canada. (An Act respecting Immigration and Immigrants, 1906 Section 26, p.114)

As this excerpt makes clear, exceptions could be made if accompanying families were able to support disabled individuals. In such cases, families were responsible for providing a bond of several hundred dollars to compensate the government in the event that the individual became a 'public charge'. Successive revisions to the immigration act in 1910, 1919 and 1952 did little to change the provisions relating to disability and ill health (Mosoff 1999). In 1976, a new immigration act introduced the specific wording of 'excessive demand' in relation to Canada's health and social service systems. Section 19(1)(a)(ii) of the act included the statement that: 'persons who are suffering from any disease, disorder, disability or other health impairment' will be denied entry if, in the opinion of a medical officer, the nature, severity of probably duration of the condition 'would cause or might reasonably be expected to cause excessive demands on health or social services.'

During the 1990s, legal pressure against the medical inadmissibility provisions of the immigration act began to mount. Key here was the Angela Chesters case, in which a German-born woman living with Multiple Sclerosis who had applied to immigrate to Canada in 1994 to join her Canadian husband was denied entry on the basis that her need for 'future health and medical services would fall in the category of excessive demands' (Chesters v. Minister of Citizenship and Immigration 2003). Chesters appealed this decision in Federal Court, arguing that Section 19(1)(a)(ii) of the Immigration Act contravened sections of the Canadian Charter of Rights and Freedoms including Section 15, which guarantees equality rights for persons with disabilities. The Federal Court dismissed the appeal, with the judge citing as precedent earlier Supreme Court decisions that (1) identified immigration as a privilege rather than a right and (2) found that the

Charter can distinguish between citizens and non-citizens, a point to which we return below (see Canada (Minister of Employment and Immigration) v. Chiarelli, 1992).

While Chesters' appeal to the Charter was unsuccessful, the growing legal pressure against the excessive demand provisions meant, in the words of one key informant, that 'the writing was on the wall that eventually this is going to get to the Supreme Court, and they are going to be found to be violating the Charter' (KI6, Lawyer, Toronto). In response, the government revised the statutory provisions as part of broader changes contained within the 2001 *Immigration and Refugee Protection Act* (IRPA). Under IRPA, refugee claimants and some family-class applicants (spouses and children under 18 of persons already resident in Canada) would be exempt from medical inadmissibility, while other family-class applicants and applicants in the economic class (currently two thirds of all immigrants) would continue to be subject to the provisions (CIC facts & figures, 2014). IRPA regulations define 'excessive demand' as:

- (1) a demand on health services or social services for which the anticipated costs would likely exceed average Canadian per capita health services and social services costs over a period of five consecutive years ... [or]
- (2) or a demand on health services or social services that would add to existing waiting lists [producing] an inability to provide timely services to Canadian citizens or permanent residents. (Minister of Justice, 2002, p.1)

The average per capita costs cited here are derived from annual reports from the Canadian Institute for Health Information; the 2014 cost threshold was set at \$6,387 per year, or roughly \$32,000 over a five-year period. The majority of this amount is for health care (roughly \$6,000), while the remaining amount reflects average per capita spending for social services, including home care, specialized residential services, special education services, social and vocational rehabilitation

services, personal support services, and assistive devices. Key informants noted that it is easy to exceed the cost threshold, particularly since there is no stratification of costs by age or other factors (i.e., the costs associated with health and social service use of older or disabled applicants are not compared with the average costs of older or disabled Canadians).

Under IRPA, applicants must undergo a medical examination by a designated Panel Physician (PP), either within or outside of Canada. CIC provides detailed instructions to the medical examiners, particularly with respect to ‘conditions of significance’ relating to excessive demand identified in a 2003 ministry directive (these include cancers and cardiac conditions, as well as cognitive impairment, childhood developmental delay, hearing impairment and psychiatric conditions). These instructions combine a focus on timely identification of conditions with explicit emphasis on the potential costs of health or social service needs. For example, the Immigration Medical Examination Instructions (IMEI) for hearing impairment states:

PPs must screen all clients for deafness or hearing impairment and provide additional details of any abnormalities that are identified. This screening is particularly important for children as they would likely be offered medical/surgical interventions as well as receive special education and/or other social services (CIC, nd, p.1)

If a medical examiner detects a disability or illness that they believe will involve excessive demand, this finding is communicated to a visa officer who in turn informs the applicant that they, or their dependent, may be inadmissible on health grounds. The applicant has 60 days to either challenge the medical finding and/or demonstrate that they have a ‘reasonable and workable plan to mitigate the excessive burden’. Given the public nature of the Canadian health care system, applicants cannot offer to privately fund the costs of anticipated inpatient care, but they can demonstrate a capacity to pay privately for outpatient services, prescription medication and social services. They

can also demonstrate the existence of other non-financial sources of support (for example, extended family in Canada) that might offset the use of formal services, although it is unclear to what extent these supports matter in the determination of eligibility.

It is difficult to know the number of people impacted by these provisions. Data on medical inadmissibility are not published and numbers released through the Access to Information request provide only a partial representation given the absence of cases from before 2011/12. These partial data show there were 122 medical inadmissibility refusals finalized by the ministry in 2013 and 145 finalized in the first six months of 2014. Due to inconsistent reporting, not all of these finalizations were linked to a specific health ground in the database (i.e., excessive demand, public health risk), but of those that were identified (n=61) all were linked to excessive burden. There are also limitations to relying on finalization rates. As a key informant noted when discussing the CIC data:

This is not actual cases. It is extremely difficult to obtain tangible statistics from CIC in this area because the actual finalizations are not relevant. There might be 500 cases pending.

They are not releasing those (KI2, Immigration lawyer, Toronto)

However, beyond the numbers it is the meaning attributed to the potential mobility of people with disabilities that is at issue. The Council of Canadians with Disabilities (CCD), a national advocacy organization, has argued that the existence of the excessive demand provision ‘devalues Canadians with disabilities and does nothing to recognize the contribution persons with disabilities and their families can and do make to Canadian society’ (CCD 2013, no page).

In one sense, the Canadian state’s concern with the immigration of disabled people has remained fairly consistent over the course of the past century (Hanes 2009). As Saltes (2013, p.64) argues, ‘despite numerous revisions, Canadian immigration policy continues to assess immigration



applicants against corporeal norms and potential expenses thereby perpetuating the idea that inclusion of ‘abnormal’ bodies is detrimental to a healthy and productive citizenry’. Yet there is a risk of over-emphasizing the permanence of the medical inadmissibility provisions in such statements. In some respects, things have changed. For example, the categories of immigrants subject to medical inadmissibility have changed. Between 1906 and 1910, revisions to the Immigration Act distinguished ‘physically defective’ persons from those who were deemed ‘mentally defective’, indicating that some of the former might be eligible for immigration if they “have such profession, occupation, trade, employment or other legitimate mode of earning a living” (An Act Respecting Immigration 1910, Section 3(c), p.208). This statutory recognition that at least some immigrants with physical impairments might be economically productive is deserving of further academic inquiry. Similarly, the more recent exemption of refugee and family class applicants from medical inadmissibility provisions, and the political and legal struggles that underlie this exemption, needs a more detailed accounting. More generally, if we return to the point made by Söderström et al (2013), it is important to not lose sight of the ongoing material and discursive work – the practices, logics and sites – in and through which the state’s power of classification is enacted, reproduced and contested, a topic to which we now turn.

### **Enacting and Contesting ‘Excessive Demand’**

In this section, we use the impacts of a landmark legal case to provide a window onto the practical working of the excessive burden provisions. The case involved a challenge to findings of medical inadmissibility brought by two applicants in the business sub-class of the broader economic class that was heard by the Supreme Court of Canada in 2005 (*Hilewitz v. Canada (Minister of Citizenship and Immigration)* 2005). Both applicants were deemed qualified to immigrate, but

were denied admissions because both had children with intellectual disabilities who were found inadmissible due to excessive demand.

The Hilewitz case centered on the applicants' argument that CIC used 'categorical exclusions' to deny entry to people with significant health concerns and disabilities, rather than individualized assessments that took into account (1) the specific nature of the person's illness or disability, (2) the 'reasonable possibility' of excessive demand rather than simply the applicant's ineligibility for service; and (3) non-medical factors such as family support and the financial resources available to offset and/or pay for needed services. CIC countered that only medical facts were to be considered in determining excessive demand, and that a 'risk averse' approach recognized that a family's resources could decline, resulting in a burden on public services. The Supreme Court ruled 7-2 in favour of the applicants, with the author of the majority decision noting that:

It seems to me somewhat incongruous to interpret the legislation in such a way that the very assets that qualify investor and self-employed individuals for admission to Canada can simultaneously be ignored in determining the admissibility of their disabled children (Hilewitz v. Canada (Minister of Citizenship and Immigration), 2005, no page).

The Supreme Court decision on individualized assessment has changed the process through which visa officers make decisions about disabled applicants and the practices used by applicants and their advocates to contest these decisions. In the application process, visa officers now communicate a preliminary finding of medical inadmissibility to an applicant, who is then provided with an opportunity to contest the medical interpretation and/or the potential burden, or to provide a 'mitigation plan' to deal with the service costs. In this context, a key objective for

applicants is to construct the disabled person in a way that challenges their one-dimensional representation as an unwanted burden. For example:

You get an assessment that says ‘this person has borderline intellectual deficits, he is going to need social and vocational rehab, potentially personal support services, and on and on’. What is incumbent upon an applicant there is to bring forward what type of services and training the individual already had in their home country. That can go a long way to offsetting the social services cost in Canada, and most, if not all, social services can be privately funded (KI2, Immigration lawyer, Toronto)

I gave you the example of a child on the autism spectrum. If the child is already in school (.) it may be possible to go to the school and ask how the child is doing and if in the school’s opinion the child is doing okay, have an evaluation done and put forward a medical finding that in fact the child does not need specialized services from the school (KI3, Immigration Consultant, Vancouver)

In one sense, the space made for individualized assessment and contestation through Hilewitz is important in that it moves from a narrow and often generic focus on problems and costs at the time of application to a more contextual and longitudinal reading of the familial, social, and economic circumstances of individual applicants. Yet there remain significant limitations to what can be accomplished in this legal space. Notwithstanding the intent of the decision, key informants argued that visa officers continue to fall back on generic assessments of both the significance of a disability, and the associated service burden:

They tend to exaggerate the prognosis and they tend to exaggerate the health care costs associated with that prognosis. I’m not attributing any kind of malice to CIC but I think

they just do a textbook looking up of the disease and their concerns are with potential excessive demands on health or social services so they tend to gravitate towards the worst-case scenario (KI1 Immigration lawyer, Toronto)

In many respects, this is not surprising and accords with the underlying bio-political logic of the system, in which the value and potential utility of bodies ‘is carefully calculated and managed’ by the state (Weibe 2009, p.129; also Ong 1995).

More fundamentally, while individualized assessment allows for a more fine-grained analysis of the medical and non-medical circumstances of an applicant’s life, it leaves untouched the assumption that there *is* a threshold beyond which disabled bodies can be legitimately labeled excessively demanding, and therefore rendered ineligible to move. At the same time, the emphasis on individualized assessment, and the importance of the mitigation plan, crystallizes a broader differential politics, in which the mobility of some disabled bodies is made possible by the economic capital of individual applicants and their families (Cresswell 2010a). This fact was not lost on some key informants. One lawyer who worked for a disability organization noted:

[Hilewitz] just called out for a different analysis from the one that was being put forward by the appellant which was if you can pay you can stay, and that shouldn’t be the grounds on which Canada would make their immigration policies (KI5, Immigration Lawyer, Toronto).

Lawyers representing two disability organizations appeared as interveners in the Hilewitz case. They called for a broader framing of the issue, arguing that any interpretation of the medical inadmissibility and excessive demand provisions should reflect the principles of equality and non-discrimination contained in the Section 15 of the Charter. The Supreme Court dismissed the arguments of the interveners in its decision on Hilewitz. However, there are ongoing efforts to re-

imagine the relationship between the non-discrimination and equality rights of the Charter and immigrant applicants. On the one hand, there are efforts to challenge earlier Supreme Court rulings that the protections afforded by the Charter do not extend to non-citizens. While lawyers contesting findings of excessive demand have repeatedly argued that these provisions contravene the Charter, to date CIC has either won or settled these cases so that no legal precedent is set. As one key informant noted:

The problem is always that you really have to get the right case that goes forward and usually the government is wise enough to (pause) If they think they are going to lose and it's going to set a bad precedent they wait for the case to come along that they are more likely to win (KI6, Immigration Lawyer, Toronto)

On the other hand, efforts to extend protections afforded by the Charter may hinge on a challenge to the territorial limits of Canadian law. Section 32(1) of the Charter 'does not expressly impose territorial limits on [the Charter's] reach' (Rennie and Rothschild 2009, p.127). As a result, the geographical scope of the Charter's application has been a matter for the courts to decide. While the Supreme Court has to date upheld the legal argument that the Charter *generally* does not apply beyond Canada, recent cases have continued to challenge these territorial limits. In particular, cases have directed attention at the overseas actions of Canadian government officials and members of the armed forces towards non-Canadian citizens, with the argument that individuals who are subject to Canadian laws and procedures should also be able to claim Canadian constitutional rights regardless of citizenship (see Rennie and Rothschild 2009; also R. v. Hape, 2007; Amnesty International Canada v. Canada (Canadian Forces), 2008). While such cases do not concern medical inadmissibility specifically, their efforts to set a precedent regarding the application of the Charter beyond the territorial boundaries of Canada, if successful, may offer a

legal means to challenge the state's use of excessive demand as a basis for excluding disabled immigrants.

## **Discussion & Conclusion**

They are becoming more and more selective, focusing more and more on the economic benefit that the individual applicant can bring to Canada. Immigration has always brought economic benefit but what this government is looking for is immediate and direct. They need to see it. You come here. You do this job. You contribute so much. (KI4, Immigration Consultant, Vancouver)

In this paper we have drawn on disability scholarship and mobilities research to examine the impact of medical inadmissibility provisions within Canadian immigration law. We have suggested that a longstanding concern with access and accessibility among disability scholars intersects in productive ways with questions of im/mobility and citizenship that have been central to recent mobilities scholarship. Together, these literatures have helped us to think through the ways in which medical inadmissibility provisions classify specific disabled bodies as excessively demanding, thereby rendering them ineligible to move as immigrants to Canada.

It is important to acknowledge the limitations of the work presented here. First, our data are limited in the sense that we do not include the perspectives of persons with disabilities and their families whose im/mobility has been impacted by these statutory provisions. The limited data obtained from CIC also make it difficult to assess the numbers of people directly impacted by these provisions. We have also not been able to systematically examine the ways in which disability intersects with other social differences like race, class and nationality to shape experiences within the immigration system. The legal cases we examined, as well as recent media

coverage of the medical inadmissibility issue, have involved disabled persons (both adults and children) and families from developed countries who are typically well educated and possess the economic resources necessary to challenge CIC's finding of medical inadmissibility. In this sense, they are not representative of a larger population of disabled persons, in both the global north and south, for whom the prospect of international migration is unlikely.

Notwithstanding these limitations, our analysis highlights the ways in which understandings and experiences of disability emerge in relation to the statutory provisions governing medical inadmissibility within Canada's immigration system. These statutory provisions, and the procedures and assessments that they necessitate, rest on narrowly defined biomedical criteria, which perpetuate a 'deficit' model of disability. The process of assessment and categorization is relational in the sense that medical examinations work to define and govern the movement of both the 'good immigrant' and the unwanted applicant. At the same time, these provisions send important signals about the 'bounding of legitimate citizenship' in relation to issues of mobility (Spinney et al 2015: 328; also Weibe 2009; Cresswell 2013); indeed the actions of the state with respect to disabled applicants convey an enduring assumption that disabled bodies are *inherently* burdensome, a status masked but not erased by hard-won legal protections available to Canadian citizens.

In one sense, there are significant continuities between the contemporary system and provisions that existed in immigration law dating back to the mid-19<sup>th</sup> Century. Yet we have also heeded arguments in recent mobility scholarship that it is important not to take for granted the state's power to categorize and control migrant bodies. As Söderstrom et al (2013) argue, the 'immigration system' is enacted, reproduced and contested over time and in the context of specific sites. Some sense of this ongoing work of enacting and contesting emerges from our analysis of

the policy documents, procedure manuals and key informant interviews. Following the Supreme Court decision in *Hilewitz*, CIC visa officers have been required to provide individualized assessments to determine excessive demand, while immigration applicants, family members and advocates can now work to provide more ‘contextual’ representations of disabled people’s lives. The range of practices open to actors within the immigration system has thus changed in small but significant ways.

These revisions are positive in some respects; they allow applicants to broaden the meaning of disability from a narrow medical reading of embodied ‘deficits’ and they permit some recognition of diversity among disabled people. In this sense, the changes create potential for other ways of understanding and enacting disability in the relations between applicants, families, visa officers, medical examiners and others that animate the immigration system. Yet the revisions leave unchallenged the legitimacy of excessive demand as a basis for exclusion. Moreover, the shift to individualized assessments – coupled with the ability for applicants to pay to offset the ‘burden’ of disability – can be seen as entirely consistent with a particular neoliberal intensification of market logics in the contemporary immigration system (Ong 2006). In this context, governing strategies “promote an economic logic in defining, evaluating and protecting certain categories of subject and not others” (Ong 2006, p.16). With respect to medical inadmissibility, this entails the application of calculative practices by the state to evaluate the capacities and costs of individual applicants and their families. The results of such calculative action render some disabled applicants admissible to Canada (although they may be denied access to social benefits and entitlements) while others are excluded. Significantly, the balance between political and market logics is shaped and constrained in the Canadian context by the public nature of the health care system, and the limited potential to purchase private medical services. It is around the edges of the Canadian health



care system (e.g., in private payment for prescription drugs) and in the private funding of social services where the economic resources of individual applicants and families can be used to render otherwise problematic bodies mobile.

Finally, we note that recent developments concerning medical inadmissibility resonate with broader trends in Canadian immigration policy. As the quote at the beginning of the conclusion suggests, recent years have witnessed an increased emphasis on exploiting the *immediate* economic benefits of migrants (also De Genova 2013) while limiting the state's exposure to their social reproductive costs. For example, there has been a rapid increase in the number of temporary foreign workers (tripling between 2002 and 2012 to over 300,000), who are expected to come with few of the social costs associated with permanent settlement. In addition, CIC introduced a 'super-visa' for parents and grandparents in the family class in 2014 to replace permanent residency. While visas permit stays of up to two years, they prohibit access to public health services and require purchase of private health insurance. In the same year, CIC reduced the maximum age for dependent children, so that youth between 19 and 22 can no longer accompany parents, but must now apply to come to Canada "on their own merits, as foreign students or through various economic programs" (Government of Canada 2014, no page). Like current medical inadmissibility provisions, these developments signal both a growing state concern with old, young, and disabled migrants as potential threats to social security, and a concurrent market-driven logic that assesses the capacity of individual migrants to offset public costs through human and economic capitals.

## References

Amnesty International Canada v. Canada (Canadian Forces) Federal Court of Canada (2008)

Retrieved from Department of Justice website: <http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/54887/index.do?r=AAAAAQAHYW1uZXN0eQE>

An Act respecting Immigration and Immigrants (1906)

An Act Respecting Immigration (1910)

Amoore, L. (2006) Biometric borders: Governing mobilities in the war on terror. *Political Geography* 25(3): 336–351.

Binnie J, Edensor T, Holloway J, Millington S and Young C. (2007) Mundane mobilities, banal travels. *Social and Cultural Geography* 8(2): 165-174.

Blewett, J. and Hanlon, N. (2016) Disablement as inveterate condition: Living with habitual ableism in Prince George, British Columbia. *The Canadian Geographer* 60: 46–55.

Butler, R. and Parr, H. (1999) *Mind and Body Spaces*. London: Routledge.

Canada (Minister of Employment and Immigration) v. Chiarelli. Supreme Court of Canada (1992) Retrieved from Department of Justice website: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/855/index.do>

Chesters v. Canada (Minister of Citizenship and Immigration) Federal Court of Canada (2002)

Retrieved from Department of Justice website: <http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/37882/index.do?r=AAAAAQAIY2hlc3RlcnMB>

Chouinard V, Hall E and Wilton R (eds) (2010) *Towards Enabling Geographies*. Farnham: Ashgate.

Colaco v. Canada (Minister of Citizenship and Immigration) (2006) Federal Court of Canada

2006 FC 896. Retrieved from the Federal Court of Canada website (<http://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/46011/index.do?r=AAAAAQAGY29sYWNvAQ>)

- Council of Canadians with Disabilities (2013) *Stephen Hawking Could Never Become a Canadian* (www.ccdonline.ca/en/socialpolicy/access-inclusion/hawking)
- Cresswell T (2010a) Towards a politics of mobility. *Environment and Planning D* 28(1): 17-31.
- Cresswell T (2010b) Mobilities I: Catching up. *Progress in Human Geography* 35(4): 550-558.
- Cresswell T (2012) Mobilities II: Still. *Progress in Human Geography* 36(5): 645-653.
- Cresswell, T. (2014) Mobilities III: Moving on. *Progress in Human Geography* 38 (5): 712-721.
- Cresswell, T. and Merriman, P. (2011) *Geographies of Mobilities: Practices, Spaces, Subjects*. Farnham: Ashgate.
- Darcy, S. (2012) (Dis) embodied air travel experiences. *Journal of Hospitality and Tourism Management*, 19: 1-11.
- De Genova, N. (2013) The perplexities of mobility. In Söderström, O., Randeria, S., Ruedin, D., D'Amato, G. and Panese, F. (eds) *Critical Mobilities*. Lausanne: EPFL, 101-122.
- Fleischer, D. and Zames, F. (2012). *The disability rights movement: From charity to confrontation*. Philadelphia: Temple University Press.
- Gaete-Reyes, M. (2015) Citizenship and the embodied practice of wheelchair use. *Geoforum* 64: 351–361.
- Gleeson B (1999) *Geographies of Disability*. London: Routledge.
- Government of Canada (2014) Changes to the definition of a dependent child (June 23) <http://www.cic.gc.ca/english/departement/media/notices/2014-06-23.asp> (accessed October 5, 2016).
- Hall, E. and Wilton, R. (2016) Towards a relational geography of disability. *Progress in Human Geography*. (published online August 1: doi: 10.1177/0309132516659705).

- Hanes, R. (2009) An historical exploration of Canadian immigration legislation as it pertains to people with disabilities. *Developmental Disabilities Bulletin* 37, 91-126.
- Hilewitz v. Canada (Minister of Citizenship and Immigration); De Jong v. Canada (Minister of Citizenship and Immigration) Supreme Court of Canada (2005) Retrieved from Department of Justice website: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2291/index.do>
- Immigration of Refugee Protection Act (2001 C 27) Retrieved from Department of Justice website: <http://laws-lois.justice.gc.ca/eng/acts/I%2D2.5/>
- Imrie R (2012) Auto-disabilities: the case of shared space environments. *Environment and Planning A* 44(9): 2260 – 2277.
- Imrie, R. and Edwards, C. (2007) The geographies of disability: reflections on the development of a sub-discipline. *Geography Compass* 1(3): 623-640.
- Ingram, A. (2010) Biosecurity and the international response to HIV/AIDS. *Area* 42: 293–301.
- Jocoy, C. and Del Casino, V. (2010) Homelessness, travel behavior, and the politics of transportation mobilities. *Environment and Planning A* 42: 1943-1963.
- Kitchin, R. (1998) 'Out of Place', 'Knowing One's Place': *Disability & Society* 13(3): 343-356.
- Macpherson H (2010) Non-representational approaches to body–landscape relations. *Geography Compass* 4(1): 1–13.
- Maddern, J. and Stewart, E. (2010) Biometric geographies, mobility and disability. In Chouinard, V., Hall, E. and Wilton, R. (eds) *Towards Enabling Geographies*. Ashgate: Farnham, pp.237-253
- Martin, C. (2011) Turbulent Stillness: The politics of uncertainty and the undocumented migrant. In D Bissell & G Fuller (eds), *Stillness in a Mobile World*. Routledge, pp. 192-208.

- Martin, D. (2015) From spaces of exception to 'campscapes'. *Political Geography* 44(1), 9-18
- Merriman P (2012) Human geography without time-space. *Transactions of the Institute of British Geographers* 37:13–27.
- Minister of Justice (2002) *Immigration and Refugee Protection Regulations*. Ottawa: Government of Canada (<http://laws-lois.justice.gc.ca/eng/regulations/sor-2002-227>; accessed October 5, 2016)
- Mosoff, J. (1999) Excessive Demand on the Canadian Conscience. *Manitoba Law Journal* 26, 149.
- Ong, A. (1995) Making the biopolitical subject: Cambodian immigrants, refugee medicine and cultural citizenship. *Social Science and Medicine* 40(9), 1243-1257.
- Ong, A. (2006) *Neoliberalism as Exception: Mutations in Citizenship and Sovereignty*. Durham and London: Duke University Press.
- Poria, Y., Reichel, A., and Brandt, Y. (2010) The flight experiences of people with disabilities. *Journal of Travel Research* 49: 216-227.
- R. v. Hape. Supreme Court of Canada (2007) Retrieved from Department of Justice website: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2364/index.do>
- Rennie, D. and Rothschild, R. (2009) The Canadian Chart of Rights and Freedoms and Canadian Officials Abroad. *Supreme Court Law Review* 47: 127-146.
- Rumford, C. (2010) Global borders: An introduction to the Special Issue. *Environment and Planning D* 28: 951–956.
- Saltes, N. (2013) 'Abnormal' Bodies on the Borders of Inclusion. *Surveillance & Society* 11: 55-73.
- Shakespeare T (2014) *Disability Rights and Wrongs Revisited*. London: Routledge.

- Smith, S., Swanson, N. and Gökarıksel, B. (2015) Territory, bodies and borders. *Area*  
doi: 10.1111/area.12247
- Söderström, O., Randeria, S., Ruedin, D., D'Amato, G. and Panese, F. (2013) Of mobilities and moorings: Critical perspectives. In Söderström, O., Randeria, S., Ruedin, D., D'Amato, G. and Panese, F. (eds) *Critical Mobilities*. Lausanne: EPFL, v–xxv.
- Spinney, J., Aldred, R. and Brown, K. (2015) Editorial: Geographies of citizenship and everyday (im)mobility. *Geoforum* 64: 325–332.
- Taylor, Z. and Józefowicz, I. (2012) Intra-urban daily mobility of disabled people. *Journal of Transport Geography* 24, 155–172.
- Thomas C (2004) How is disability understood? An examination of sociological approaches. *Disability & Society* 19(6): 569–583.
- van Hoven, B. and Elzinga, M. (2009) Bikes are Such a Nuisance': Visually Impaired People Negotiating Public Space in Groningen. *European Spatial Research and Policy* 16: 131–144.
- Weibe, S. (2009) Producing Bodies and Borders. *Surveillance & Society* 6(2): 128–141.
- Worth N (2013) Making friends and fitting in: a socio-relational understanding of disability at school. *Social & Cultural Geography* 14(1): 103–123.